

1 THE HONORABLE JOHN C. COUGHENOUR  
2  
3  
4  
5  
6

7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 MATTHEW SCIABACUCCHI,  
11 derivatively on behalf of ZILLOW  
12 GROUP, INC.,

13 Plaintiff,  
14 v.

15 RICHARD N. BARTON, *et al.*,

16 Defendants.

17 CASE NO. C17-1568-JCC

18 ORDER

19 This matter comes before the Court on the parties' stipulation and proposed order to  
20 consolidate, appoint lead plaintiffs and counsel, and stay proceedings (Dkt. No. 21). On October  
21 23, 2017, Plaintiff Matthew Sciabachucchi filed this verified shareholder derivative complaint  
22 ("Derivative Action") against Defendants. (Dkt. No. 1.) On January 8, 2018, Melvyn Klein filed  
23 a nearly identical shareholder derivative complaint against Defendants. *See Melvyn Klein v.*  
24 *Richard Barton, et al.*, Case No. C18-0027-JCC, Dkt. No. 1 (W.D. Wash. January 8, 2018).<sup>1</sup>  
25 Also pending before this Court, is a related securities class action ("Securities Action") that  
26 shares substantial factual overlap with both Derivative Actions. *See In re Zillow Group, Inc.*,  
Case No. C17-1387-JCC, Dkt. No. 29 (W.D. Wash. 2017, January 5, 2018).

1 The parties have filed an identical stipulation and proposed order in the *Klein* matter.

The parties in both Derivative Actions now stipulate that: (1) the Derivative Actions should be consolidated for all purposes; (2) Sciabachucchi and Klein should be appointed lead plaintiffs in the consolidated Derivative Action; (3) The Weiser Law Firm, P.C. and Gainey McKenna & Egleston should be appointed co-lead counsel, with Badgley Mullins Turner PLLC appointed liaison counsel; and (4) the consolidated Derivative Action should be stayed pending the Court's adjudication of a motion to dismiss in the Securities Action. (Dkt. No. 21 at 3-7.)

The Derivative Actions should be consolidated because they involve common questions of fact and law. *See* Fed. R. Civ. P. 42(a)(1). The Court additionally finds that it is appropriate for the fair and efficient administration of this consolidated action to appoint Sciabachucchi and Klein as lead plaintiffs and to appoint their selected attorneys as co-lead and liaison counsel. Finally, the Court finds that all proceedings should be stayed in this consolidated action pending the resolution of Defendants' motion to dismiss in the Securities Action. *See* 15 U.S.C. § 78u- 4(b)(3)(B) ("In any private action arising under this chapter, all discovery and other proceedings shall be stayed during the pendency of any motion to dismiss . . .")

Given the above determinations, the Court ENTERS the following stipulation:

## **CONSOLIDATION OF THE ACTIONS**

1. Defendants hereby agree to accept service of the operative complaints in each of the Derivative Actions.

2. Defendants are not required to take any action with respect to the complaints filed in the Derivative Actions, including answering or otherwise responding.

3. The Derivative Actions are hereby consolidated for all purposes, including pretrial proceedings, trial, and appeal, and are referred to herein as the "Consolidated Action."

4. Every pleading filed in the Consolidated Action, or in any separate action included herein, shall bear the following caption:

4

5 THIS DOCUMENT RELATES TO:

---

6

7 5. The files of the Consolidated Action will be maintained in one file under Master  
8 File No. C17-1568-JCC.

9

10 6. When a document being filed pertains to all of the actions included within the  
11 Consolidated Action, the phrase “All Actions” shall appear immediately after the phrase “This  
12 Document Relates To:”. When a pleading applies only to some, but not all, of the actions  
13 included within the Consolidated Action, the document shall list, immediately after the phrase  
14 “This Document Relates To:”, the docket number for each individual action to which the  
15 document applies, along with the last name of the first listed plaintiff in said action.

16

17 7. When any shareholder derivative action is filed in this Court, transferred to this  
18 Court, or removed to this Court that concerns substantially the same parties, property,  
19 transaction, or event and thus should be considered as a “Related Shareholder Derivative Case”  
20 and consolidated with, and into, the Consolidated Action, Co-Lead Counsel (defined herein)  
21 shall, upon notice of the existence of the Related Shareholder Derivative Case, promptly file a  
22 Notice of Related Case in both the Consolidated Action and in the Related Shareholder  
23 Derivative Case, serve a copy of this Order signed and entered by the Court (the “Notice”) upon  
24 counsel of record for the plaintiff(s) in the Related Shareholder Derivative Case and any  
25 defendants in such Related Shareholder Derivative Case that have not previously been named in  
26 the Consolidated Action (the “Related Case Parties”), and file in the Consolidated Action proof  
of service of such Notice.

27

28 8. The Related Case Parties shall have five (5) business days following service of  
29 the Notice to confer with Co-Lead Counsel and counsel for the Defendants. If, following such  
30 conferences, any of the Related Case Parties do not agree that the subject action meets the

1 definition of a Related Shareholder Derivative Case and shall be subject to all terms of this  
2 Order, such Related Case Parties shall have fifteen (15) business days from service of the Notice  
3 within which to file a motion for entry of an order excepting such action from the terms of this  
4 Order (the “Motion”). Such Motion shall be noticed for a hearing date by the Related Case  
5 Parties pursuant to a stipulated agreement with Co-Lead Counsel and counsel for Defendants in  
6 the Consolidated Action as to such hearing date. If, however, following Notice, none of the  
7 Related Case Parties files a Motion within the time frame and subject to the procedures set forth  
8 herein, the Court, after notice of such failure filed by the Co-Lead Counsel, shall proceed to  
9 conduct any necessary review and enter an order, as appropriate, directing that the Related  
10 Shareholder Derivative Case be consolidated with, and into, the Consolidated Action and be  
11 subject to the terms of this Order.

12 9. All documents previously served or filed in any of the actions consolidated with,  
13 and into, the Consolidated Action are deemed part of the record in the Consolidated Action.

14 **APPOINTMENT OF LEAD PLAINTIFFS,**  
15 **CO-LEAD COUNSEL, AND LIAISON COUNSEL**

16 10. Plaintiffs Matthew Sciabacucchi and Melvyn Klein are hereby appointed as Lead  
17 Plaintiffs in the Consolidated Action.

18 11. The Weiser Law Firm, P.C. and Gainey McKenna & Egleston are hereby  
19 appointed as Co-Lead Counsel in the Consolidated Action.

20 12. Badgley Mullins Turner PLLC is hereby appointed as Liaison Counsel in the  
21 Consolidated Action.

22 13. Plaintiffs’ Co-Lead Counsel shall set policy for Plaintiffs for the prosecution of  
23 the Consolidated Action and delegate and monitor the work performed by all plaintiffs’ attorneys  
24 to ensure there is no duplication of effort or unnecessary expense.

25 14. Plaintiffs’ Co-Lead Counsel shall assume the following powers and  
26 responsibilities on behalf of all plaintiffs: coordinate and direct the preparation of pleadings;

coordinate and direct the briefing and argument of motions; coordinate and direct the conduct of discovery and other pretrial proceedings; coordinate the selection of counsel to act as plaintiffs' spokesperson at pretrial conferences; call meetings of plaintiffs' counsel as they deem necessary and appropriate from time to time; conduct any and all settlement negotiations with counsel for Defendants; coordinate and direct the preparation for trial and trial of this matter, and delegate work responsibilities to selected counsel as may be required; and coordinate and direct any other matters concerning the prosecution or resolution of the Consolidated Action.

15. Any agreement reached between counsel for Defendants and any of Plaintiffs' Co-Lead Counsel shall be binding on the other Co-Lead Counsel, any other counsel for any plaintiff in the Consolidated Action, and on Plaintiffs.

## STAY OF THE CONSOLIDATED ACTION

16. The Parties agree that during the pendency of this stay, Defendants shall use best efforts to include Plaintiffs in any formal mediation with the plaintiffs in the Securities Action and shall use best efforts to include Plaintiffs in any formal mediation with any plaintiff in any related derivative lawsuit and discuss their potential participation with the parties in interest.

17. The Parties agree that notwithstanding this stay of this Consolidated Action, Plaintiffs may file an amended complaint, for which Defendants' time to respond shall not begin to run during the stay.

18. All proceedings in this Consolidated Action shall be stayed effective upon the Court's entry of this Order.

19. In the event that Defendants agree to produce, or are ordered to produce by a court of competent jurisdiction, any documents pursuant to an inspection request related to the facts and circumstances at issue in this Consolidated Action made pursuant to Washington law (RCW 23B.16.020) by any holder or beneficial owner of Zillow stock, copies of such documents shall be provided to Co-Lead Counsel within ten (10) business days of Defendants' production, subject to the execution by Plaintiffs and Co-Lead Counsel of a confidentiality agreement

1 governing the use and disclosure of these materials and evidence of Plaintiffs' stock ownership  
2 throughout the relevant periods covered by the inspection request.

3       20. Upon occurrence of either (1) the dismissal of the Securities Action, with  
4 prejudice, and exhaustion of all appeals related thereto, or (2) the denial of any motion to dismiss  
5 the Securities Action in whole or in part, and the filing of an answer to the operative complaint  
6 by Securities Action Defendants; the Parties shall notify the Court within fifteen (15) days and  
7 shall submit a joint proposed scheduling order that will provide Defendants at least forty-five  
8 (45) days from submission of the proposed order to respond to the complaint. The stay of the  
9 Consolidated Action pursuant to this Order shall remain in effect until further Order of this Court  
10 or agreement of the Parties.

11       //

12       //

13       //

14       //

15       //

16       //

17       //

18       //

19       //

20       //

21       //

22       //

23       //

24       //

25       //

26       //

1 IT IS SO STIPULATED

2 DATED: January 31, 2018.

3 s/ Duncan Turner

4 Duncan C. Turner, WSBA No. 20597  
5 **Badgley Mullins Turner PLLC**  
6 19929 Ballinger Way NE, Suite 200  
7 Seattle, WA 98155  
8 Telephone: (206) 621-6566  
9 Facsimile: (206) 261-9686  
10 Email: [dtturner@badgleyturner.com](mailto:dtturner@badgleyturner.com)

11 Robert B. Weiser  
12 Brett D. Stecker  
13 James. M Ficaro  
14 **The Weiser Law Firm, P.C.**  
15 22 Cassatt Avenue  
16 Berwyn, PA 19312  
17 Telephone: (610) 225-2677  
18 Facsimile: (610) 408-8062  
19 Email: [rweiser@weiserlawfirm.com](mailto:rweiser@weiserlawfirm.com)  
[bds@weiserlawfirm.com](mailto:bds@weiserlawfirm.com)  
[jmf@weiserlawfirm.com](mailto:jmf@weiserlawfirm.com)

20 **GAINEY McKENNA & EGLESTON**  
21 Thomas J. McKenna  
22 Gregory M. Egleston  
23 440 Park Avenue South, 5th Floor  
24 New York, NY 10016  
25 Telephone: (212) 983-1300  
26 Facsimile: (212) 983-0383  
Email: [tjmckenna@gme-law.com](mailto:tjmckenna@gme-law.com)  
Email: [gegleston@gme-law.com](mailto:gegleston@gme-law.com)

27 **Proposed Co-Lead Counsel for Plaintiffs**

28 s/ Ronald L. Berenstain

29 Ronald L. Berenstain, WSBA No. 7573  
30 s/ Sean C. Knowles  
31 Sean C. Knowles, WSBA No. 39893  
32 **Perkins Coie LLP**  
33 1201 Third Avenue, Ste. 4900  
34 Seattle, WA 98101  
35 Telephone: (206) 359-8000  
36 Facsimile: (206) 359-9000  
37 Email: [rberenstain@perkinscoie.com](mailto:rberenstain@perkinscoie.com)  
[sknowles@perkinscoie.com](mailto:sknowles@perkinscoie.com)

38 Meryl L. Young, *Admitted Pro Hac Vice*  
39 **Gibson, Dunn & Crutcher LLP**  
40 3161 Michelson Drive  
41 Irvine, California 92612  
42 Telephone: 949.451.3800  
43 Facsimile: 949.451.4220  
44 Email: [myoung@gibsondunn.com](mailto:myoung@gibsondunn.com)

45 Alexander K. Mircheff, *Admitted Pro Hac Vice*  
46 **Gibson, Dunn & Crutcher LLP**  
47 333 South Grand Avenue  
48 Los Angeles, California 90071  
49 Telephone: 213.229.7000  
50 Facsimile: 213.229.7520  
51 Email: [amircheff@gibsondunn.com](mailto:amircheff@gibsondunn.com)

52 *Attorneys for Defendants Richard N. Barton, Erik*  
53 *C. Blachford, Lloyd D. Frink, Jay C. Hoag,*  
54 *Gregory B. Maffei, Spencer M. Rascoff, Gordon*  
55 *S. Stephenson, Gregory L. Waldorf, Kathleen*  
56 *Philips, April Underwood and Nominal Defendant*  
57 *Zillow Group, Inc.*

58 The Clerk is DIRECTED to terminate the Status Conference currently scheduled for  
59 February 20, 2018.

60 //

61 //

62 //

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
DATED this 5th day of February 2018.



---

John C. Coughenour  
UNITED STATES DISTRICT JUDGE